REMARKS

I. Introduction

Claims 2-19 are pending in this application. Based on the following remarks, Applicants respectfully request reconsideration and allowance of the pending claims.

II. 35 U.S.C. § 103 Rejections

The Action rejects claims 2-4, 7, 13, and 16-19 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,595,066 to *Zwanikken et al.* Applicants respectfully traverse these rejections and request reconsideration and withdrawal thereof.

The Action admits that *Zwanikken et al.* does not expressly or impliedly suggest conveying slaughtered birds or parts thereof in different horizontal planes, as recited in claims 2 and 16. Rather, providing no evidence or other support, the Action conclusively maintains that "[i]t was well established to optimize space by using parallel conveyor paths and it is not seen how organizing such paths in a vertical direction, as claimed, as opposed to a horizontal direction, as demonstrated by Zwanikken, constitutes novelty." Applicants respectfully submit that a *prima facie* case of obviousness has not been established.

If a reference does not "expressly or impliedly suggest the claimed [invention (as is the case here),] the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985). The Action merely maintains that it would have been obvious to convey the birds in different horizontal planes to optimize space. Such an argument is improper hindsight reconstruction and respectfully does not rise to the "convincing line of reasoning" required by the law. As the Federal Circuit has admonished:

> Measuring a claimed invention against the standard established by section 103 requires the oft-difficult but critical step of casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in the case of less technologically complex inventions, where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher."

In re Dembiczak, 175 F.3d 994, 999 (Fed. Cir. 1999) (citations omitted).

The Federal Circuit has also stressed that the showing necessary to establish obviousness must be *clear and particular* and that broad conclusory statements are insufficient to establish obviousness. *Id.* Applicants respectfully submit that the Action has failed to carry its burden. The Action's position that it would have been obvious to modify the process and device disclosed in *Zwanikken et al.* to convey birds in different horizontal planes is mere conclusion. The Action does not provide a scintilla of evidence – much less the requisite clear and particular evidence – to support it. The Action fails to cite a single reference that teaches the claimed conveyance path and fails to provide any substantive analysis – other than "it's obvious because it would optimize space" – as to why such an arrangement would have been obvious to one of the ordinary skill in the art.

More particularly, the Action has failed to explain why one skilled in the art would have been motivated to adapt the teachings of *Zwanikken et al.* to incorporate conveyance of birds in different horizontal planes, as recited in claims 2 and 16. In short, the Action simply cannot make such a showing because one of skill in the art would understand, upon a reading of *Zwanikken et al.*, that such an adaptation would result in contamination of the birds – an unsuccessful (indeed unacceptable) result in the poultry processing industry.

Zwanikken et al. discloses that the birds are sprayed and subsequently cooled for a period of three quarters of an hour in the first cool step. Column 2, lines 27-39. If the birds are to be kept wet for such a time period, a substantial amount of water must be sprayed on the birds. Excess water will naturally drip from the birds. Such dripping is fine if the birds are all traveling in the same horizontal plane because the excess water will simply drip onto the processing plant floor. However, if the birds were traveling in different horizontal planes (as recited in claims 2 and 16), water from birds traveling in higher horizontal planes will drip on birds traveling in lower horizontal planes. This dripping results in contamination of the birds, rendering the contaminated birds inedible. Thus, the device of *Zwanikken et al.* is simply not suitable for conveying birds at different horizontal levels. One of ordinary skill in the art would therefore not be motivated to modify the teaching of the *Zwanikken et al.* reference in this way and certainly not expect successful results upon such a modification.

Applicants further note that the Examiner simply seems to question the "novelty" of the claimed invention. Applicants respectfully submit that, as outlined in 35 U.S.C. § 102, an invention is novel unless the conditions of one of sub-sections (a) through (g) exists. The Examiner has not alleged that this is case. In fact, the Examiner withdrew the rejections of claims 2-4, 7, 13, 16, 17 under 35 U.S.C. § 102(b) as being anticipated by *Zwanikken et al.*

For at least these reasons, claims 2 and 16 are allowable, as are claims 3, 4, 7, and 13 and claims 17-19 which respectively depend from claims 2 and 16.

The Action rejects claims 8, 9, 11, 12, 14, and 15 under 35 U.S.C. 103(a) as being unpatentable over *Zwanikken et al.* in view of U.S. Patent No. 4,199,958 to Masuda et al., claims 5 and 6 under 35 U.S.C. 103(a) as being unpatentable over *Zwanikken et al.* in view of U.S. Patent No. 6,103, 286 to Gutzman, et al., and claim 10 under 35 U.S.C. 103(a) as being

unpatentable over *Zwanikken et al.* in view of U.S. Patent No. 4,196,221 to Dew. Applicants respectfully traverse these rejections and request reconsideration and withdrawal thereof. Claims 5, 6, 8, 9-12, 14, and 15 are allowable at least by virtue of their dependency from allowable claim 2.

CONCLUSION

Applicants believe that this application is in condition for allowance. Such action is respectfully requested.

If the Examiner believes any informalities remain in the application that may be corrected by Examiner's Amendment, or there are any other issues that can be resolved by telephone interview, a telephone call to the undersigned attorney at (404) 815-6389 is respectfully solicited.

Respectfully submitted,

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